

TOWN OF HARWICH



BOARD OF HEALTH

732 Main Street Harwich, MA 02645

508-430-7509 – Fax 508-430-7531

E-mail: health@town.harwich.ma.us

**Town of Harwich Board of Health
Tuesday, December 8, 2015-6:30 PM
TOWN HALL – SMALL HEARING ROOM
MINUTES**

BOARD OF HEALTH MEMBERS PRESENT: Chairman Dr. Robert Insley, Board Members Pamela Howell, R.N. & Frank Boyle. Health Director Paula Champagne & Administrative Assistant Jennifer Clarke.

OTHERS PRESENT: Steve Setian, Phil Boire, John Allen, Attorney David Reid, Arlene Wilson, Peggy Devany, Patty Curtis, Chuck Curtis, Brian Cox, Maureen Cox, Keith Fernandes, Dan Ojala, Mark Novota, Kathleen Hamilton Welch, Attorney William Crowell, Dan Croteau, Leo & Karen Monfredo, Bill Eldridge, Dale Nikula & Cynthia Bayerl.

I CALL TO ORDER

At 6:37 p.m., Chairman Dr. Robert Insley called the meeting to order.

II MINUTES OF PREVIOUS MEETING – 11/10/2015

Motion made by Ms. Howell, second by Mr. Boyle to accept the 11/10/2015 Board of Health meeting minutes. Unanimous.

III 6:30-7:00 PM - BOARD OF HEALTH WORK SESSION

Health Director made Board members aware that Cynthia Bayerl was present in the audience as a candidate for a vacant seat on the Board of Health. Ms. Bayerl has an interview with the Board of Selectmen next week.

Discussion-State Ethics-Rule of Necessity

Ms. Champagne read the rule of necessity & stated that the current Board of Health only has 3 members, and it takes 3 members to have a quorum. As a Board of business people, there is a

chance that a conflict will occur. The rules of necessity allows an item to be heard even though there may be a conflict of interest with a member of the Board. If the item is time sensitive, and a member recusing themselves will leave the Board without a quorum to act, then the item can be heard. The business of the town must be allowed to continue. The affected member must state the conflict. If the rule of necessity is to be used, it will be stated at the beginning of the meeting and read into the meeting minutes and the hearing could continue.

REPORT OF THE HEALTH DIRECTOR (November)

- **Accela Computer Program Development**-Absent any positive results, we were forced to make the decision to send out the 2016 permit renewals without the Accela changeover. The “wrapper” for the Harwich portal is still not complete; information does not populate from the database into the form and we have not have the opportunity to conduct in house testing. On a positive note, we learned that we would be able to generated GIS mapping from report generation not involving standard layers. For example, we would be able to map site specific information such as where certain types of permits are located (i.e. barns for avian flu awareness). Documents are being scanned into Accela & able to be e-mailed to clients. At the December 7, 2015 Board of Selectmen meeting, Health Director Champagne made a brief Accela presentation.
- **Projects**
 - **Annual Budgets**- Budgets have been prepared & submitted. This process involved Health Department and input on Community Development (Admin. Support & supplies).
 - **Septic System Pumping Record Database**- Administrative Assistant has established a computer database to organize the ongoing receipt of pumping records received monthly from the area treatment plants.
 - **Avian Flu**- 2 conference calls during the week of November 23 to brief local Board of Health & emergency management on the development of an avian flu epidemic control plan. We have been in touch with the EM Director Culver and have a plan to begin mapping known domestic flock locations and to initiate an education plan once we are in receipt of the MDPH reports (due 1/1/2016).
 - **Department webpage**- updated to include information on the avian flu and radon issues.
 - **Town Council**- sought regarding potential Board of Health candidates and conflict of interest.
 - **Employee Training/Wellness**- “Maintain don’t gain” challenge for the holiday season-weigh in over 6 week holiday period to stay within 2 lbs.
- **Complaints/Investigations**
 - **Exposure to recycled tire rubber as mulch**- researched information on artificial turf and concerns of exposure at schools. MDPH fact sheet has been forwarded to the client.
 - **Chatham Sewer Regulations**- Wastewater Implementation Com. Requested Health Director review of regulations as Harwich has been requested to model same going forward with joint town efforts.
 - **RET’s/Sewage permit review-walk thru for compliance conducted at:**

- **26 Kevin Road-** 1 bedroom deed restriction; walk thru to verify floor plan-continuing issues regarding seasonal restriction & use.
- **42 Shore Road-** Construction not in compliance with Board of Health order of conditions and deed restriction-basement fully finished, bar, full bathroom with walk in shower; dug out windows for egress and light/ventilation/habitable space.
- **20 Glen Road-**unpermitted finished room/bedroom over garage in Zone II
- **9 Hathaway-** unpermitted rooms
- **Food Service-**New owners/operations at the former “Andale” space on Route 28, 554 Route 28. They propose to open “The Mad Minnow” in the spring of 2016 with a bar/restaurant.
- **Cranberry Valley Golf Course-new RFP has been reviewed.**
- **Noble House-**working with Building Commissioner on illegal bedrooms on second floor. Building Commissioner has sent violation notice.
- **Annual reports-** Due January 22, 2016. Chair will need to submit.
- **Mary Jane Watson-** Mimi’s retirement has been received by the Board of Selectmen with regret.
- **Environmental Notification-** Board of Health has received notification of new gas lines going through mid-cape. Does not pertain to Health Department.

IV 7:00 PM - OLD/UNFINISHED BUSINESS

None Discussed.

V NEW BUSINESS

- A. Hearing-Lisa & Steve Setian, 23 Ocean Ave,** to re-consider Order of Conditions dated 1/23/1990-no increase in habitable space will be allowed for this dwelling.

Dr. Insley opened the hearing. Steven Setian was present. The house had a Title 5 inspection & it was brought to the attention of the Health Department that there was an increase of habitable space from what was previously approved. The owner stated that they had no knowledge of the habitable space restriction. The area on the second floor, which consists of a small room & bathroom, is considered habitable. They are requesting to open up the area by removing the wall (ceiling to floor) and having it be considered a loft/storage area. There is no heat in the area. The property is on the real estate market and they would like to be made clear to prospective buyers about the deed restriction on the house. Mr. Boyle closed the hearing & Ms. Howell seconded.

Health Director Champagne did a walk thru of the property. The second floor wouldn’t have normally met the definition of habitable space due to lack of heat etc., however, it was presented with beds in it. The best possible return to compliance would be removing the full wall. Ms. Champagne recommended that approval of the return to compliance plan with the following:

1. Remove upstairs door and wall and replace with railings.
2. Stage accordingly as storage or loft space so potential buyers are not mislead in any way that this is considered as a bedroom.
3. The property shall be restricted to a total of 2 bedrooms.

4. Record deed restriction as “margin referenced” and return a copy to the Health Department.

Mr. Boyle moved to accept the recommendation of the Health Director. Ms. Howell seconded. Unanimous.

B. Hearing-Estate of Lois H. Allen, 5 Sea Street, to consider a variance request to install a new Title 5 septic system prepared by J.M. O'Reilly & Associates Inc.-New Construction
Variance from Harwich Board of Health Regulation

Per Harwich Board of Health Regulation 1.210 Distance Requirements: To allow a soil absorption system to be 16' from a coastal dune where 100' is required. Variance request of 84'.

Dr. Insley opened the hearing, Keith Fernandes, J.M. O'Reilly & Associates, Inc., was present. The project has not been approved by the Conservation Commission, therefore, cannot be approved by the Board of Health. Mr. Fernandes stated that there is a superseding order of conditions for the project for DEP. He handed the Board a letter from the buyer's attorney. Mr. Boyle closed the hearing & Ms. Howell seconded.

Health Director Champagne recommended that the applicant could either withdraw the application without prejudice, or the Board can choose to deny their application, not the variance and clarified that the application was being denied as incomplete since it has not finished the Conservation Commission process. Mr. Fernandes stated that he would not withdraw the application.

Mr. Boyle moved to accept the recommendation of the Health Director & request of the applicant, and deny the application, pending approval from the Conservation Commission. Ms. Howell seconded. Unanimous.

C. Hearing-Gerald Murray Jr., 2121 Route 28, to consider a variance request to replace a sewage disposal system prepared by Down Cape Engineering.

Variances from 310 CMR 15.211(1) Minimum Setback Distances

1. Per 310 CMR 15.405(1)(a): To allow a soil absorption system to be 36' from a coastal bank where 100' is required. Variance request of 64'.

2. Per 310 CMR 15.405(1)(a): To allow a septic tank to be 25' from a coastal bank where 50' is required. Variance request of 25'.

3. Board of Health Regulation 1.210: All tanks <100ft from a wetland shall be of monopour or plastic construction.

4. Board of Health Regulation 1.210: In no case shall the Board of Health allow a setback variance to less than 75' to the wetland.

5. Environmentally Sensitive Area Part II: Request to qualify for an exemption.

Dr. Insley opened the hearing. Dan Ojala, Down Cape Engineering Inc., was present. They have already received Conservation approval. There is a cesspool 25' or so from the bank. They do make an h2o monopour tank which will be used. Septic tank to a pump chamber then to a leaching facility as high on the property as possible. The closest resource is a dry coastal bank

approximately 93' from the leaching facility. No increase in flow, just a septic upgrade. The neighbor from 2131 route 28 approached Dan and noted that the vent was close to his patio. The vent has been relocated to the south east corner of the leaching area. Dr. Insley closed the hearing & Mr. Boyle seconded.

Health Director Champagne recommended approval of the project with the following conditions:

1. A revised plan shall be submitted to the Health Department showing the re-location of the vent pipe.
2. Sewage disposal system shall be inspected and maintained every 3 years
3. The dwelling shall be restricted to a total of 4 bedrooms as submitted on the 10/2/2015 plan by Down Cape Engineering Inc. No increase in number of rooms or flow.
4. A zabel filter will be installed (cleaning and maintenance requirement for filter)
5. Annual inspection requirement for the pressure dosed system.
6. Record deed restriction as "margin referenced" and return a copy to the Health Department.

Ms. Howell moved to accept the recommendation of the Health Director to approve the variance request. Mr. Boyle seconded. Unanimous.

D. Hearing-Jacqueline Vilandre, 26 Ocean Avenue, to consider a variance request to replace a sewage disposal system prepared by Dan A. Speakman Construction.

Variances from 310 CMR 15.211(1) Minimum Setback Distances

- 1. Per 310 CMR 15.405(1)(a): To allow a septic tank to be 1' from the property line where 10' is required. Variance request of 9'.**
- 2. Per 310 CMR 15.405(1)(a): To allow a septic tank to be 2' from the property line where 10' is required. Variance request of 8'.**
- 3. Per 310 CMR 15.405(1)(a): To allow a soil absorption system to be 1' from the property line where 10' is required. Variance request of 9'.**
- 4. Per 310 CMR 15.405(1)(a): To allow a soil absorption system to be 1' from street property line where 10' is required. Variance request of 9'.**
- 5. Per 310 CMR 15.405(1)(b): To allow a septic tank to be 2' from the cellar wall where 10' is required. Variance request of 8'.**
- 6. Per 310 CMR 15.405(1)(b): To allow a soil absorption system to be 2.5' from the cellar wall where 20' is required. Variance request of 17.5'.**
- 7. Per 310 CMR 15.248: No reserve area provided.**

Dr. Insley opened the hearing. Dan Speakman was present. Attorney William Crowell was present. The current system is a cesspool and this is a very small lot. Existing dwelling has 2 bedrooms, and the proposed dwelling will remain 2 bedrooms. In the request for variances, they have included the proposed floor plans as renovations for the property. Atty. Crowell is representing the buyer of the property.

There is not currently a full basement under the dwelling & Dr. Insley asked if they have received approval from the building department for the full basement. Dan said that there will be a crawl space under the dwelling and it will need to be approved by the building department.

Attorney Crowell presented the Board with revised plans showing a possible 5' expansion of the dwelling to the North. There will be no additional bedrooms however a loft is shown on the proposed floor plan. Mr. Boyle closed the hearing & Ms. Howell seconded.

Health Director Champagne noted that there is no reserve area shown on the plan. When the foot print is expanded, it is considered as new construction and variances will not be granted. A site visit was done and there is no evidence of a foundation. She stated the revised plan being submitted to the Board at the meeting differed substantially from the plans posted for the agenda. The Board needs clarification of the existing and proposed foundations. A discussion of the existing foundation took place. The dwelling appears to be sitting on piers. The Board is concerned that the loft space will be turned into sleeping space. Attorney Crowell stated that this is the buyer's only chance to obtain a little more living area in the house. Once the house is re-built, they will not be able to add any additional space.

Kathleen Hamilton Welch, abutter, was present. She said that there is a double driveway between this property and abutters. She inquired how much land would be between the proposed 5' extension to the dwelling and the property line. 5.1' will be on the Northeast side and 6.8' on the Northwest side. The driveway will be located on the South side of the dwelling.

Health Director Champagne recommended a continuance of the hearing until the January 12, 2016 Board of Health meeting. The applicant needs to provide additional information regarding the existing and proposed foundations as well as the land space on both sides of the dwelling.

Mr. Boyle moved to accept the recommendation of the Health Director to continue the variance request until the January 12, 2016 meeting. Mr. Howell seconded. Unanimous.

E. Hearing-Russell Hines, 168 Uncle Venie's Road, to consider a variance request to replace a sewage disposal system prepared by Stephen A. Haas Engineering Inc.

Variances from 310 CMR 15.211(1) Minimum Setback Distances

Per 310 CMR 15.221(7): To allow a soil absorption system to be a maximum of 5' deep where 3' is required. Variance request of 2'.

Dr. Insley opened the hearing. Stephen Haas was present at the meeting. The existing lot has 2 buildings; a main house & cottage. Total number of bedrooms is 7 between the 2 dwellings. Because of the size of the leaching facility and the slope of the lot, it was difficult to get the system in and re-grade the lot, which is the reason for the variance request. To mitigate for the depth, a vent has been proposed. They meet all other setback requirements. Mr. Boyle closed the hearing & Ms. Howell seconded.

Health Director Champagne stated that local Board of Health regulations allow for 2 dwellings to have 1 septic system as long as the dwellings are under common ownership. They are required to have a larger/multi-compartment tank for multi-family use. The sewer & water lines cross, which is not favorable, but due to the large leaching facility, is necessary. The water line will be sleeved. Health Director Champagne recommended approval of the variance request with the following conditions:

1. The dwellings shall be restricted to a total of 7 bedrooms as submitted on the 11/20/2015 plan by Stephen A. Haas Engineering Inc. No increase in number of rooms or flow.
2. Record deed restriction as “margin referenced” and return a copy to the Health Department.

Mr. Boyle moved to accept the recommendation of the Health Director to approve the variance request. Ms. Howell seconded. Unanimous.

F. Discussion-McKnight/Monfredo, 42 Shore Road-return to compliance plans-dwelling (basement) finished in violation of Order of Condition dated 12/9/2014.

Dr. Insley opened the discussion. Attorney Crowell & the Monfredo's were present. Attorney Crowell presented the Board with a letter from client's father regarding nature of neighborhood and talking points for the Board to read over and photos of the owner's basement from their Hingham home. The client's acknowledged that there was a mis-communication between them and their builder, however, they were under the impression that they were allowed to finish the basement space. Dr. Insley pointed out that there was a previous variance dated 9/9/2015 with a condition that there was to be no increase in habitable space, flow design, number of bedrooms, (4) and the square footage to the dwelling as shown on the proposed 1st and 2nd floor plans dated 11/20/2014 and basement floor plan dated 11/25/14 prepared by Spring Hill Design.

Building, plumbing & electrical departments had signed off on project, and when the Health Department did a walk thru is when the issues arose. The building commissioner had issued a temporary occupancy permit (60) days so the owners could use the property during the Thanksgiving holiday.

Dr. Insley suggested removing the shower from the bathroom in the basement. The clients said that the shower would be used for after exercising. This property is used as a 2nd home. Mr. Boyle closed the hearing & Ms. Howell seconded.

Health Director Champagne explained the difference between the building and health codes. The habitable space requirements are immaterial to the building department. Their purview and approvals are different from the health department as far as occupancy, use, flow and number of bedrooms. In a similar situation, the Board discussed the presence of a full bathroom as an area of concern in making the area habitable as a bedroom.

1. The shower should be removed from the bathroom basement.
2. The dwelling shall be restricted to a total of 4 bedrooms as submitted on the 8/31/2015 plan by Moran Engineering Associates LLC. No increase in number of rooms or flow.
3. Record deed restriction as “margin referenced” and return a copy to the Health Department.

Mr. Boyle moved to accept the recommendation of the Health Director. Ms. Howell seconded. Unanimous.

G. Hearing-William & Christine Eldridge, 19 Park Place, to re-consider Order of Conditions dated 9/12/2014-no increase in habitable space, flow design, number of bedrooms (5) and square footage to the dwelling prepared by Moran Engineering Associates LLC.

Dr. Insley opened the hearing. Dan Croteau, Moran Engineering Associates, LLC, was present. Attorney William Crowell was present. Proposed tear down and re-build. They are seeking a partial foundation on the east side. In keeping with Board of Health recommendation, the proposed dwelling would have 3 bedrooms. The existing bedrooms are small. The proposed dwelling will be on the same footprint as the existing dwelling. The footprint of the building will not change. The new dwelling will be approximately 60 square feet larger. Mr. Boyle closed the hearing & Ms. Howell seconded.

Health Director Champagne clarified that the existing dwelling has 5 bedrooms and none of them meet the requirement for 2 person occupancy. They range from 74-92 sf. There is no basement under the current dwelling & they are proposing a basement under a portion of the dwelling. The new basement does not meet a requirement for variances as it meets the 20' setback. The other portion of the basement will be a crawl space. Ms. Champagne recommends approval of the plans dated 11/12/2015 prepared by Moran Engineering Associates LLC noting that that the order of condition dated 9/12/2014 is still applicable and the following conditions:

1. The dwelling shall be restricted to a total of 3 bedrooms as submitted on the plan by Encore Construction dated 11/12/2015. No increase in number of rooms or flow.
2. Record deed restriction as "margin referenced" and return a copy to the Health Department.

Mr. Boyle moved to accept the recommendation of the Health Director. Ms. Howell seconded. Unanimous.

VII CORRESPONDENCE
DISCUSSED DURING HEALTH DIRECTOR'S REPORT

VIII PERMITS-SEE ATTACHED LIST DATED 12/8/2015

Ms. Howell moved to approve the list of permits for renewal dated 12/8/2015. Mr Boyle seconded. Unanimous.

IX OTHER
NONE DISCUSSED

X ADJOURN- The meeting adjourned at 8:48 p.m.

Ms. Howell moved to adjourn. Mr. Boyle seconded. Unanimous.
Submittals for this meeting are part of the permanent record.

Respectfully submitted,

Jennifer Clarke

Next meeting is Tuesday, January 12, 2016 at 6:30 p.m. in the small hearing room.